Capital punishment - Doctrine of Torture and Kill

By BS Murthy

That hundred and forty years after Fyodor Dostoyevsky enlightened us against capital punishment, we still persist with it in some parts of our planet, belies our insensitivity towards the sensitivities of these condemned by the justice system of our own making. What Dostoyevsky's Prince Myshkin said in *The Idiot* then is something forever, "When they announce the sentence, you know, and prepare the criminal and tie his hands, and cart him off to the scaffold—that's the fearful part of the business. The people all crowd round—even women— though they don't at all approve of men looking on. And I may tell you—believe it or not, as you like - that when that man stepped upon the scaffold he CRIED, he did indeed,—he was as white as a bit of paper. Isn't it a dreadful idea that he should have cried —cried! Whoever heard of a grown man crying from fear—not a child, but a man who never had cried before—a grown man of forty-five years? Imagine what must have been going on in that man's mind at such a moment; what dreadful convulsions his whole spirit must have endured; it is an outrage on the soul that's what it is. Because it is said 'thou shalt not kill,' is he to be killed because he murdered some one else? No, it is not right, it's an impossible theory. I assure you, I saw the sight a month ago and it's dancing before my eyes to this moment. I dream of it, often."

Even in terms of legal equity, the capital punishment, in the rarest of the rare cases, is untenable in our country, where criminals routinely manage to slip through the yawing gaps in our investigative mechanism or evade prosecution exploiting the loopholes in our criminal justice system, where the apathetic prosecution procedure enables the indicted to obtain bail, albeit after a short stint at the goal as under-trials, and to remain at large thereafter, where life-imprisonment for murder means but a fourteen-year sentence, which might get curtailed by the whim of a payroll, born out of the fancy of a political expediency. Given the realities of criminality, the fallacy of

the advocacy of capital punishment should be apparent for the informed, whose clarion call should be for the speedy trial and effective incarceration in our country.

Be that as it may, unmindful of the realities of crime and punishment, it is the penchant of the proponents to view capital punishment as a means of deterrence to murder. While the spirit of the statute is to ensure the right to life etc. of the citizens, it is but a naïve argument that without the capital punishment in place everyone would be at each others' throat. It is worth noting that in spite of the well-meaning rent control act, which in practice proved to be inimical to the landlords, they are not known to take recourse to violence to evict the tenants. And notwithstanding the statutory provisions of divorce for infidelity, an odd man still murders his unfaithful wife. So, it is not the laws, sound or otherwise, that condition the reactions of the involved but it is the individual mind-set that shapes one's reaction to the perceived injustices. Thus, while the presence of the capital punishment on the statute has not obliterated the murderous mind-set in some, so its absence from it is not going to make us murderers all. On the other hand, it is the mind-set of the murderer that defines his life as a lifer - lack of remorse and the absence of repentance would ensure a troubled existence, a life-long punishment by itself, self-imposed at that.

In its primitive form, laws were made to punish those crossing the legal boundaries drawn around individual social spaces and invariably it was the have-nots who were left catching the wrong end of the legal stick of trespass. Why, in the 19th Century England, many a hapless and hungry ended up on the gallows for stealing, believe it, a loaf of bread! If the harshness of the sentence mirrors the 'unjustness' of that age, that someone was caught in the act of pick-pocketing at the public hanging of a pick-pocket exposes the 'naiveness' of the 'death as deterrent' supposition. Well, it is other times now when 'justice' does not seek gallows for the 'haves' who bungle public money in billions in white-collar crimes. Lest our own posterity should perceive us as barbarous forbearers, we must bring the curtains down on the obnoxious capital punishment - murder most foul - by understanding the underlying absurdity of it all.

It is averred that only by hanging the murderer that the deceased's ends of justice would be met. Going by this analogy, God must be hanged over and again to meet the ends of justice of those who perish in the Act of God Perils such as typhoons, floods et al. How absurd. The cruelty of the capital punishment lies not only in inflicting an unnatural death upon the convict but also in the inimical life he is forced to lead before it ends on the gallows. As Shakespeare averred, "death, a necessary end, will come when it will come" but the thought of the 'inevitable death' never bothers us, the free men, to bog us down in our life till the very end that is. It is not hard to imagine that a convict on the death row is condemned to live with death on his mind devoid of the blessing of life-hope, which is but 'living in torture'. So, the mercy that death shows man, is denied to the convict on the death row, and that makes the capital punishment, murder most foul – torture and kill.

Arguably, the 'catch and hang' Kangaroo trial saves the convict from the mental torture of the pre-gallows incarceration but our judicial sensibilities would rather have a free and fair trial, prolonged though, to ensure that no innocent gets punished even at the cost of letting off a dozen guilty. Well but of what avail is the 'fair procedure' that unwittingly sanctifies cruelty towards the convicted and whither goes the judicial sensitivity when it comes to letting the convict rot in the cell robbed of his hope before the hangman snuffs out his hope-less life?

We have the last word of Prince Myshkin, penned by the genius of Dostoyevsky, "I believe that to execute a man for murder is to punish him immeasurably more dreadfully than is equivalent to his crime. A murder by sentence is far more dreadful

than a murder committed by a criminal. The man who is attacked by robbers at night, in a dark wood, or anywhere, undoubtedly hopes and hopes that he may yet escape until the very moment of his death. There are plenty of instances of a man running away, or imploring for mercy—at all events hoping on in some degree—even after his throat was cut. But in the case of an execution, that last hope—having which it is so immeasurably less dreadful to die,—is taken away from the wretch and CERTAINTY substituted in its place! There is his sentence, and with it that terrible certainty that he cannot possibly escape death—which, I consider, must be the most dreadful anguish in the world. You may place a soldier before a cannon's mouth in battle, and fire upon him—and he will still hope. But read to that same soldier his death-sentence, and he will either go mad or burst into tears. Who dares to say that any man can suffer this without going mad? No, no! it is an abuse, a shame, it is unnecessary — why should such a thing exist?"

What else is the capital punishment that punishes those with 'death on their mind' twice for the same crime - with long imprisonment followed by execution - but the doctrine of torture and kill?

Corollary

Though "to execute a man for murder is to punish him immeasurably more dreadfully than is equivalent to his crime" just the same, if all murderers were to be put to death in the same manner, as a means of deterrent or not, one might still say, unjust or otherwise, there was uniformity of justice after all. But it is not the case either: who were to know whether death by hanging is more humane than beheading or the lethal injection is more considerate than the electric-chair and vice versa. It can be said that the presumptive 'relative mercy' of these execution modes would never be known since there is no way to execute one in all 'four ways' to get a feedback. And even if it were possible, individual perceptions about the 'pain factor' in the respective executions might vary. That way, the administration of capital punishment in varied ways is fraught with the objectivity of subjectivity - of the statute of the country and in case of the United States of America, the State in which one is condemned.

What about the travesty of the due process of law that leads one to the gallows etc.? The question is better answered by repeating the 'old argument' about the fallacy of the judicial process that earmarks some of the murderers for the death row in 'the rarest of rare cases'. It is not difficult to see how the law unjustly turns its head on the 'unfortunate criminal' - say, two men, Mr. X and Mr. Y, the condemned are entitled to courtesy though not to equity as would be evident, are arraigned in the same court, albeit before a different bench, for having murdered their spouses, provoked alike to kill in a like fashion. More often than not, it so happens that the 'effective advocacy' for mercy by the lawyer involved combined with the 'exalted approach' of the 'judge on the bench' might earn Mr. X a reprieve of life as 'lifer'. On the other hand, the ineffectual defence of Mr. Y's 'case for mercy' by his advocate coupled with the 'legalistic attitude', not something to be faulted by any means, would lead him to the gallows or whatever to his doom.

What justice is it that one murderer is allowed to 'live' and another is condemned to 'die' for the same crime by the same law that strives to be just at all costs? There can never be 'justness in justice' crippled by 'subjectivity of objectivity' and only the abolition of capital punishment would bring in 'objectivity to subjectivity' in administering the criminal justice.